

Erik Belt

From: Finnerty, Kathryn [KFinnelly@choate.com]
Sent: Tuesday, June 07, 2005 10:04 AM
To: Erik Belt
Subject: ScanSoft/VST
Importance: Low

Dear Eric -

This responds to your e-mail of last evening. As I said in our telephone conversation that preceded the e-mail, we are attempting to determine the parties' rights and obligations with respect to the document that ScanSoft filed in court. There is no need to engage in threats. If, after our review, we are in doubt as to the appropriate course of action, we will put the issue to the court and seek its direction. In the meantime, the document and its contents will not be disclosed to our client.

In an effort to advance our analysis, you may wish to respond to the following questions:

1. The protective order does not appear to be directly applicable because the relevant document was not produced in discovery. It was, instead, filed in court. It was part of the public record for a period of days. What do you believe is the effect, if any, of that fact?
2. It is unclear what caused the document to be filed in court and what precautions were taken to prevent its filing. Are you prepared to address that question?
3. On its face, the document appears to be work product. It is not labeled as attorney-client privileged, and there is no other indication that it was communicated to a client. Do you believe that makes a difference?
4. The document relates to a patent that is not presently in suit. However, the document appears to be relevant to our case because it explains why ScanSoft has been pressing so aggressively for access to Voice Signal's source code. Do you believe that relevance matters in this type of situation?
5. ScanSoft apparently altered the public record in a way that may affect the parties' rights with respect to this issue. Was it permitted to do so unilaterally?

I am not at all sure that the foregoing is a complete list of the relevant questions because I first started to look at this issue last evening. Your responses/comments directed to the foregoing questions, if you choose to respond or comment, will allow us to make the most rapid and informed decision possible.

Thanks.

Bob

Confidentiality Statement:

This Message is transmitted to you by the law firm of Choate, Hall & Stewart LLP. The substance of this